S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

STURGEON BEACH PROPERTY OWNERS ASSOCIATION, STEVEN SCHADA, KAREN SCHADA, SCOTT SCHADA, MARTHA SILICH, and THE AVONELLE W. STRIEFF TRUST, Plaintiffs/Counter-Defendants-Appellees,	UNPUBLISHED July 5, 2005
v	No. 253878 Berrien Circuit Court
ALAN GULL and ANN MARIE GULL, Defendants/Counter-Plaintiffs/Third-Party Plaintiffs-Appellants.	LC No. 02-003616-CH

Before: Hoekstra, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

In this action to quiet title, defendants appeal as of right that portion of the trial court's order granting plaintiffs' motion for summary disposition on the ground that, as owners of lots within a plat containing a dedication for use by such owners of the "streets, alleys and walks" shown on the plat, plaintiffs Steven Schada, Karen Schada, Scott Schada, Martha Silich, and the Avonelle W. Strieff Trust retained easement rights over a portion of a platted street vacated by consent judgment in 1979. We reverse and remand.

The street at issue here, Eckland Drive, was platted in 1925 as a private thoroughfare dedicated to the use of all lot owners within Eckland's Plat of Sturgeon Beach – a residential subdivision located along the shore of Lake Michigan in New Buffalo Township. However, in connection with a subsequent class action suit regarding beach access by back lot owners within the plat, a consent judgment vesting title to Eckland Drive in those owners of lots immediately adjacent to that street and extinguishing all "legal or equitable interest therein" of any other lot owner within the plat, was entered and recorded with the Berrien County Register of Deeds in 1979.

In January 2002, defendants purchased Lot 1 of Eckland's Plat of Sturgeon Beach, including that portion of Eckland Drive adjoining Lot 1. Shortly thereafter, defendants threatened to remove or otherwise obstruct a gravel parking area encroaching onto Eckland Drive, which plaintiffs claim that they or their predecessors in title have used for parking since as

early as 1973. In an effort to continue such use unobstructed by defendants, plaintiffs filed the instant action seeking to invalidate that portion of the consent judgment vacating Eckland Drive on the ground that plaintiffs or their predecessors in title were not afforded sufficient notice of the earlier action to satisfy due process. Specifically, plaintiffs alleged that although covered by the consent judgment resolving the class action, ownership and use of Eckland Drive was not expressly at issue in that suit and that, therefore, plaintiffs were not afforded sufficient notice and opportunity to be heard with respect to any judgment concerning their rights with respect to that street. In response, defendants asserted that plaintiffs were estopped from challenging the consent judgment, a copy of which had been duly recorded and provided to all owners of record within the plat, under the doctrine of laches. Although refusing to invalidate the consent judgment, the trial court concluded that as lot owners to which Eckland Drive was dedicated at the time of platting, plaintiffs retained an easement for use consistent with that dedication regardless of the 1979 consent judgment purporting to extinguish such rights, and enjoined defendants from taking any action interfering with such right of use. This appeal followed.

Defendants first argue that the trial court erred in failing to consider whether laches bars plaintiffs' challenge of the consent judgment extinguishing their right to use of Eckland Drive and vesting title to the land on which that street was platted in defendants. We agree.

We review de novo a trial court's decision on a motion for summary disposition. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). Moreover, where raised by the parties below, this Court has the equitable power to apply the doctrine of laches. Cf. *American Electrical Steel, Co v Scarpace*, 399 Mich 306, 309; 249 NW2d 70 (1976); see also MCR 7.216(A)(7). Laches bars a party from bringing a delayed claim when the other party has been prejudiced by the delay, *Dep't of Public Health v Rivergate Manor*, 452 Mich 495, 507; 550 NW2d 515 (1996), and requires a showing of prejudice, the passage of time, and lack of diligence by the plaintiffs. *Torakis v Torakis*, 194 Mich App 201, 205; 486 NW2d 107 (1992).

With respect to the requirements of a passage of time and lack of diligence, we note that it is not disputed that a copy of the consent judgment has been duly recorded with the Berrien County Register of Deeds since March 19, 1979. Thus, plaintiffs Martha Silich and the Avonelle W. Strieff Trust, both of whom acquired title to their property after that date, were on notice of the existence and content of the consent judgment at the time they acquired title to their property within the plat.[1] See, e.g., *Schadt v Brill*, 173 Mich 647, 650; 139 NW2d 878 (1913); see also 1

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[1] Although plaintiff Silich acquired title to her property in August 2001, only five months before defendants purchased Lot 1 in January 2002, "'[i]t is the effect, rather than the fact, of the passage of time that may trigger the defense of laches.'" *City of Troy v Papadelis (On Remand)*, 226 Mich App 90, 97; 572 NW2d 246 (1997), quoting *Great Lakes Gas Transmission Co v MacDonald*, 193 Mich App 571, 578; 485 NW2d 129 (1992); see also *Torakis*, *supra* ("[u]nlike the statute of limitations, which is concerned with the time of the delay, the concern of laches is the effect of or prejudice caused by the delay"). Additionally, we note that although the Avonelle W. Strieff Trust acquired title to its property from a conveyance by the Strieffs, who in turn acquired that property by warranty deed nearly thirty years before entry of the consent judgment, Joseph Grayson, trustee of the Avonelle W. Strieff Trust, testified at deposition that he was aware of the consent judgment and its vacation of Eckland Drive "some years" before

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Cameron, Michigan Real Property Law (2 ed), § 11.24, p 382-383. Moreover, although having acquired title to their property before recordation of the consent judgment, the Schada plaintiffs conceded knowledge of the consent judgment and its contents "shortly" after its entry nearly twenty-six years ago. Despite such knowledge, however, plaintiffs took no action to directly challenge the validity of the consent judgment until now.[2]

In contrast, defendants provided evidence that they purchased Lot 1 with the express understanding that their title to that property would include ownership and exclusive use of the vacated portion of Eckland Drive adjoining that lot. An understanding undeniably justified by the 1979 consent judgment. Defendants also provided evidence that, because they would not have paid as much for the property as they did if they had known that the purchase would not include such ownership and exclusive use of Eckland Drive, they have been prejudiced by plaintiffs delay in challenging that understanding. We find that, in the absence of any direct challenge to the validity of the consent judgment at that time of defendants' purchase of Lot 1, such prejudice is sufficient to warrant application of the equitable doctrine of laches as a bar to plaintiffs' challenge of the 1979 consent judgment extinguishing their right to the use of Eckland Drive and vesting title to the land on which that street was platted in defendants.

Accordingly, consistent with the 1979 consent judgment, "fee title interest" in that portion of Eckland Drive abutting Lot 1 is vested in defendants, as owners of that lot, and plaintiffs hold "no . . . legal or equitable interest therein" arising solely from their ownership of property within the plat. This is not to say, however, that plaintiffs have not acquired prescriptive easements over Eckland Drive through actual, open, notorious, continuous, and hostile use of the gravel parking area for the requisite period of at least fifteen years. See *Williamson v Crawford*, 108 Mich App 460, 464; 310 NW2d 419 (1981). However, because the trial court did not address whether and to what extent, if any, plaintiffs have satisfied the requirements for prescriptive rights, we remand this matter for a determination in that regard.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.[3]

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly

(…continued)

defendants' purchase of Lot 1.

[2] We reject plaintiffs' assertion that because they were permitted unobstructed use of Eckland Drive from the time of the consent judgment until shortly after defendants' purchase of Lot 1, there was "no reason to bring an action" challenging the validity of the consent judgment until now. As demonstrated by the doctrine of laches, the law favors diligence and the disposition to protect one's rights. Thus, a plaintiff aware that his rights have been abridged may not sleep on those rights until a subsequent event rouses him into action. See, e.g., *Lothian v Detroit*, 414 Mich 160, 175; 324 NW2d 9 (1982). This is especially true where, as here, such delay in the assertion of perceived rights results in prejudice to the rights of another.

[3] Having determined that plaintiffs' claim disputing the validity of the consent judgment is barred by laches, we need not address the other issues presented by defendants on appeal.